

## Department of Energy

952.227-84

(End of clause)

[60 FR 11819, Mar. 2, 1995, as amended at 62 FR 42075, Aug. 5, 1997; 63 FR 10507, Mar. 4, 1998; 67 FR 14872, Mar. 28, 2002]

### **952.227-14 Rights in data-general. (DOE coverage—alternates VI and VII)**

*Alternate VI* (FEB 1998) As prescribed at 48 CFR 927.404(l) insert Alternate VI to require the contractor to license data regarded as limited rights data or restricted computer software to the Government and third parties at reasonable royalties upon request by the Department of Energy.

(k) *Contractor licensing.* Except as may be otherwise specified in this contract as data not subject to this paragraph, the contractor agrees that upon written application by DOE, it will grant to the Government and responsible third parties, for purposes of practicing a subject of this contract, a nonexclusive license in any limited rights data or restricted computer software on terms and conditions reasonable under the circumstances including appropriate provisions for confidentiality; provided, however, the contractor shall not be obliged to license any such data if the contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:

(1) Such data are not essential to the manufacture or practice of hardware designed or fabricated, or processes developed, under this contract;

(2) Such data, in the form of results obtained by their use, have a commercially competitive alternate available or readily introducible from one or more other sources;

(3) Such data, in the form of results obtained by their use, are being supplied by the contractor or its licensees in sufficient quantity and at reasonable prices to satisfy market needs, or the contractor or its licensees have taken effective steps or within a reasonable time are expected to take effective steps to so supply such data in the form of results obtained by their use; or

(4) Such data, in the form of results obtained by their use, can be furnished by another firm skilled in the art of manufacturing items or performing processes of the same general type and character necessary to achieve the contract results.

(End of alternate)

*Alternate VII* (FEB 1998) As prescribed in 48 CFR 927.404(m) make the change described in Alternate VII to limit the contractor's use of DOE restricted data.

Insert the parenthetical phrase “(except Restricted Data in category C-24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology).” after the phrase “data first produced or specifically used by the Contractor in the performance of this contract” in paragraph (b)(2)(i) of the clause at FAR 52.227-14.

(End of alternate)

[63 FR 10507, Mar. 4, 1998]

### **952.227-70—952.227-72 [Reserved]**

### **952.227-74 [Reserved]**

### **952.227-82 Rights to proposal data.**

Pursuant to 927.7002(d), include this clause in any contract which the decision to make the award included consideration of a technical proposal.

#### **RIGHTS TO PROPOSAL DATA (APR 1994)**

Except for technical data contained on pages \_\_\_\_ of the contractor's proposal dated \_\_\_\_ which are asserted by the contractor as being proprietary data, it is agreed that, as a condition of the award of this contract, and notwithstanding the provisions of any notice appearing on the proposal, the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this contract is based.

[49 FR 12042, Mar. 28, 1984, as amended at 59 FR 9109, Feb. 25, 1994; 62 FR 2312, Jan. 16, 1997]

### **952.227-84 Notice of right to request patent waiver.**

Include this provision in all appropriate solicitations in accordance with 48 CFR 927.409(t).

#### **RIGHT TO REQUEST PATENT WAIVER (FEB 1998)**

Offerors have the right to request a waiver of all or any part of the rights of the United States in inventions conceived or first actually reduced to practice in performance of the contract that may be awarded as a result of this solicitation, in advance of or within 30 days after the effective date of contracting. Even where such advance waiver is not requested or the request is denied, the contractor will have a continuing right under the contract to request a waiver of the

rights of the United States in identified inventions, i.e., individual inventions conceived or first actually reduced to practice in performance of the contract. Domestic small businesses and domestic nonprofit organizations normally will receive the patent rights clause at DEAR 952.227-11 which permits the contractor to retain title to such inventions, except under contracts for management or operation of a Government-owned research and development facility or under contracts involving exceptional circumstances or intelligence activities. Therefore, small businesses and nonprofit organizations normally need not request a waiver. See the patent rights clause in the draft contract in this solicitation. See DOE's patent waiver regulations at 10 CFR part 784.

(End of provision)

[63 FR 10508, Mar. 4, 1998]

#### 952.231-70 Date of incurrence of cost.

In accordance with 931.205-32, insert the following clause when advance understandings have been negotiated regarding costs incurred prior to the contract effective date:

##### DATE OF INCURRENCE OF COST (APR 1984)

The Contractor shall be entitled to reimbursement for costs incurred in an amount not to exceed \$\_\_\_\_\_ on or after \_\_\_\_\_ which, if incurred after this contract has been entered into, would have been reimbursable under the provisions of this contract.

(End of clause)

[49 FR 12042, Mar. 28, 1984; 49 FR 38952, Oct. 2, 1984, as amended at 74 FR 36370, July 22, 2009]

#### 952.231-71 Insurance-litigation and claims.

As prescribed in 931.205-19(f), insert the following clause in applicable non-management and operating contracts:

##### INSURANCE—LITIGATION AND CLAIMS (AUG 2009)

(a) The Contractor may, with the prior written authorization of the Contracting Officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The Contractor shall proceed with such litigation in good faith and as directed from time to time by the Contracting Officer.

(b) The Contractor shall give the Contracting Officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract. Except as otherwise directed by the Contracting Officer, in writing, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action. The Contractor, with the prior written authorization of the Contracting Officer, shall proceed with such litigation in good faith and as directed from time to time by the Contracting Officer.

(c)(1) Except as provided in paragraph (c)(2) of this clause, the Contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the Contracting Officer.

(2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with sureties and insurers approved by the Contracting Officer.

(d) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other bonds and insurance that are maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the Contracting Officer.

(e) Except as provided in paragraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the Contractor shall be reimbursed—

(1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and

(2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or limitation of funds clause of this contract.

(f) The Government's liability under paragraph (e) of this clause is subject to the